

# **EXHIBIT A**

## **Microsoft adCenter Publisher Pre-Release License and Service Agreement**

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This is an agreement between you and Microsoft Corporation (located at One Microsoft Way, Redmond, WA 98052-6399) regarding your use of the pre-release version of the Microsoft adCenter Publisher online advertising service technology and service and any associated documentation, software code or other materials made available by Microsoft (collectively referred to in this agreement as the “**Service**”). Through the Service you will receive advertisements (“**Ads**”) for display on your websites and Microsoft will pay you based upon the performance of the Ads on your websites.

This agreement applies to any updates, supplements or support services for the Service, unless other terms accompany those items. If so, those other terms apply.

**By installing, accessing or otherwise using the Service, you accept the terms of this agreement. If you do not agree to the terms of this agreement, do not install, access or use the Service.**

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**If you comply with this agreement, you have the rights below.**

1. **PARTICIPATION.** Your participation in the Service is subject to Microsoft’s prior approval, your compliance with this agreement and Microsoft’s published policies for the Service available at <http://www.adcenterpublisher.com>. To participate, you must be at least 18 years old and must set up an account at <http://beta.pubcenter.microsoft.com> by providing all of the required registration information. You must keep this account information up to date, accurate, and secure. You may not barter, trade, or otherwise exchange your account and you may not maintain more than one account. You must protect any passwords or other credentials associated with your account(s) for the Service, and take full responsibility for any use of the account(s) under your password.
2. **USE OF THE SERVICE.** Under the terms of this agreement, you may access and use the Service in accordance with Microsoft’s technical requirements for the purpose of receiving Microsoft’s advertising services and that you have registered to participate in this Service (“Your Websites”), subject to Microsoft’s prior review and approval of Your Websites. As part of the Service, Microsoft may provide you with account access to online reporting systems to view and use a variety of online reports for Your Websites’ use of the Service. You may use such reports solely for your internal business purposes.

If you receive any feedback, comments, or complaints about any Ads delivered by the Service, you agree to forward the same to Microsoft.

This agreement only gives you some rights to access and use the Service. Microsoft reserves all other rights. You may use the Service only as expressly permitted in this agreement. In doing so, you must comply with any technical limitations in the Service that allow you to use it only in certain ways. You may not rent, lease, sublicense, or lend the Service or any of its components.

3. **YOUR WEBSITES.** You must ensure that Your Websites that access the Service comply with Microsoft’s then-current published editorial policies for the Service. Such policies are currently available [here](#). You must indemnify, defend, and hold harmless Microsoft from any claims, including attorneys’ fees, related to Your Websites, other than claims caused by the

Service.

4. **PROHIBITIONS.** You may not

- work around any technical limitations in the Service or introduce or use any device, software, or routine that interferes or attempts to interfere with the operation of the Service or otherwise attempt to access the Service in any manner other than those authorized by Microsoft;
- access the Service from any websites or other locations, other than Your Websites that have been approved by Microsoft;
- Cache, store, copy, distribute, or redirect any Ads delivered by the Service;
- directly or indirectly generate impressions or clicks on an Ads, or authorize or encourage others to do so, through any automated, deceptive, fraudulent or other invalid means;
- Edit, modify, filter, obscure, or reorder any Ads (including their associated links) supplied by the Service; or
- Frame, minimize, remove, redirect, delay or otherwise inhibit or modify the display of any web page accessed by the links included with an Ad.

5. **USER DATA.** Nothing in this agreement or the Service provides for the collection or transfer of any personally identifiable information ("PII") of internet users between the parties. You must maintain a prominent online privacy policy for Your Websites. This privacy policy, at a minimum, must include: (a) a full, accurate and clear disclosure regarding the placement, use and reading of cookies and related technologies, and Your collection and use of data in relation to activity by users on the Your Websites; (b) Your use of Microsoft (and others, if applicable) for advertising services for the Your Websites; and (c) a disclosure that users may choose to not participate in Microsoft's (and others', if applicable) personalized advertising services, along with a link to a Microsoft-specified web address (and other web sites, if applicable) where the end user may "opt out" of such personalized advertising services.

6. **CONFIDENTIALITY.** The Service, including its user interface (including reporting interface), features, performance (e.g., click-through rates, eCPM, or other performance statistics provided to you by Microsoft) and documentation, is confidential and proprietary to Microsoft and its suppliers. For five years after the provision of the Service to you or its commercial release, whichever is first, you may not disclose confidential information to third parties. Your duty to protect confidential information survives this Agreement. You may disclose confidential information in response to a judicial or governmental order. You must first give written notice to Microsoft to allow it to seek a protective order or otherwise protect the information. Confidential information does not include information that

- becomes publicly known through no wrongful act;
- you received from a third party who did not breach confidentiality obligations to Microsoft or its suppliers; or
- you developed independently.

7. **EXPORT RESTRICTIONS.** The Service is subject to United States export laws and regulations. You must comply with all domestic and international export laws and

regulations that apply to the Service. These laws include restrictions on destinations, end users and end use. For additional information, see [here](#)

8. **PRE-RELEASE SERVICE.** This Service is a pre-release version. It may not work the way a final version of the Service will. Microsoft may change it, the participation requirements and criteria, and payment models for the final, commercial version. Microsoft also may not release a commercial version.
9. **SUPPORT.** Microsoft is not obligated to provide any technical or other support ("**Support Services**") for Service.
10. **FEEDBACK.** You may have the ability to give additional feedback about the Service to Microsoft. You grant to Microsoft, without charge, the right to use, share and commercialize your feedback in any way and for any purpose. You also grant to third parties, without charge, any patent rights necessary for their products, technologies and services to use or interface with any specific parts of a Microsoft software or service that incorporates your feedback. You will not give feedback that is subject to a license that requires Microsoft to license its software or documentation to third parties because Microsoft includes your feedback in our software or documentation. These rights survive this agreement.
11. **PAYMENTS.** You will receive a payment based upon the number of valid clicks on Ads from the Service on Your Websites, as measured by Microsoft's systems. Clicks that Microsoft's systems register as coming from IP addresses owned or controlled by you or clicks associated with your violation of this agreement or any of the Program Policies are not valid clicks. Payments will be made based upon then-current payment schedules and are subject then-current minimum payment amounts, both of which are described [here](#). If your earned balance does not exceed the then-current minimum payment amount at the cutoff day for a scheduled payment, those payments will roll over to the next period. **If you receive a payment that was not due to you, we may reverse or seek return of the payment and you agree to cooperate with us in our efforts to do this.**

**Microsoft makes no guarantee regarding the number of on Ads from the Service on Your Websites you may expect or the amount of any payments you may receive.**

12. **TERM AND TERMINATION.** The term of this Agreement automatically expires on May 1, 2009, but both you and Microsoft reserve the right to terminate your participation in the Service at any time for any reason. Microsoft also reserves the right to discontinue offering the Service or to modify the Service at any time in its sole discretion. If you are dissatisfied with any aspect of the Service at any time, your sole and exclusive remedy is to cease using it. Notwithstanding anything contained in the agreement to the contrary, Microsoft may also, in its sole discretion, terminate or suspend access to the Service to you at any time, in which case this Agreement automatically terminates. Upon the expiration or any termination of this Agreement, you must cease using the Service. This Section and Sections 6, 10, and 14-19 survive termination of this agreement or any discontinuation of the Service. Within ninety (90) days after the end of the calendar month in which this Agreement is terminated, Microsoft will pay you any amounts due to you under Section 11, provided that such amounts are at least \$10.
13. **MODIFICATIONS; NOTICES.** If we change this agreement, then we will give you notice before the change is in force. If you do not agree to these changes, then you must cancel and stop using the Service before the changes are in force. If you do not stop using the

Service, then your use of the Service will continue under the changed agreement. Microsoft may give notices to you, at Microsoft's option, in writing or by electronic mail to any e-mail address provided by you to Microsoft.

14. **ENTIRE AGREEMENT.** This agreement is the entire agreement with respect to the Service.
15. **APPLICABLE LAW.** Washington state law governs the interpretation of this agreement and applies to claims for breach of it, regardless of conflict of laws principles. The laws of the state where you live govern all other claims, including claims under state consumer protection laws, unfair competition laws, and in tort.
16. **LEGAL EFFECT.** This agreement describes certain legal rights. You may have other rights under the laws of your country. This agreement does not change your rights under the laws of your country if the laws of your country do not permit it to do so.
17. **CLAIM MUST BE FILED WITHIN ONE YEAR.** Any claim related to this contract or the Service may not be brought unless brought within 1 year. The 1 year period begins on the date when the claim first could be filed. If it is not filed in time, then that claim is permanently barred. This applies to you and your successors. It also applies to us and our successors and assigns.
18. **DISCLAIMER OF WARRANTY.** The Service is supplied "as-is." You bear the risk of using it. Microsoft gives no express or implied warranties, guarantees or conditions. You may have additional consumer rights under your local laws which this agreement cannot change. To the extent permitted under your local laws, Microsoft excludes the implied warranties of merchantability, fitness for a particular purpose and non-infringement.
19. **LIMITATION ON AND EXCLUSION OF REMEDIES AND DAMAGES.** You can recover from Microsoft and its suppliers only direct damages up to an amount equal to the net amount paid by Microsoft to you under this agreement during the 3 month period immediately preceding the date of the claim. You cannot recover any other damages, including consequential, lost profits, special, indirect or incidental damages.

This limitation applies to

- anything related to the Service, Script, content (including code) on third party Internet sites, or third party programs; and
- claims for breach of contract, breach of warranty, guarantee or condition, strict liability, negligence, or other tort to the extent permitted by applicable law.

It also applies even if Microsoft knew or should have known about the possibility of the damages. The above limitation or exclusion may not apply to you because your country may not allow the exclusion or limitation of incidental, consequential or other damages.